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IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

ARGENTINE REPUBLIC,
v. *Petitioner,*

AMERADA HESS SHIPPING CORPORATION and
UNITED CARRIERS, INC.,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Second Circuit

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
AND BRIEF *AMICUS CURIAE* OF
AMERICAN INSTITUTE OF MERCHANT SHIPPING,
INTERNATIONAL CHAMBER OF SHIPPING AND
FEDERATION OF AMERICAN CONTROLLED SHIPPING
IN SUPPORT OF RESPONDENTS**

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August 30, 1988

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FOR LEAVE TO FILE BRIEF *AMICUS CURIAE***

The American Institute of Merchant Shipping (AIMS), the International Chamber of Shipping (ICS) and the Federation of American Controlled Shipping (FACS) respectfully move for leave to file the attached brief *amicus curiae*. The consent of respondents has been granted; that of petitioner has been withheld.

Movants are associations of owners of merchant vessels. AIMS, whose members are owners of vessels documented under the laws of the United States, has twenty members owning approximately 170 vessels which comprise about one third of the aggregate capacity of the entire U.S.-flag merchant fleet.¹ ICS is an organization of some 40 national shipowners' associations in 34 countries and represents about half the free world's merchant fleet by tonnage. FACS is an association of American companies beneficially owning, controlling or managing merchant vessels, aggregating approximately 19 million deadweight tons, registered under the laws of Liberia, Panama, Honduras and the Bahamas.

As owners of merchant vessels, movants have a substantial interest in the preservation of the well-recognized freedom to navigate the high seas.² An unprovoked attack against a neutral merchant vessel, such as that allegedly committed by the Argentine Republic against the merchant vessel *HERCULES* during the Falklands/Malvinas War, is a direct assault upon that freedom.

To safeguard and reaffirm that freedom, an offender, even if it is a sovereign, must be required either to provide compensation or to defend its actions in an appropriate forum. Although Argentina does not deny that an unprovoked attack occurred or that such an attack is a

¹ Amerada Hess Corporation, the parent of respondent Amerada Hess Shipping Corporation, is a member of AIMS. One member of AIMS and one member of FACS have abstained with respect to this motion.

² Freedom of the high seas, including freedom of navigation, is guaranteed by the Convention on the High Seas, *done* at Geneva, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82, Art. 2, and the United Nations Convention on the Law of the Sea, *done* December 10, 1982, U.N. Pub. E. 83.V.5 (1983), Art. 87, reprinted in 21 Int'l Legal Mat. 1261 (1983).

violation of international law, it has refused either to provide or submit to any forum or to provide compensation to the owners and charterers of the *HERCULES*. If Argentina succeeds, freedom of navigation will be endangered.

Apparently because most, if not all, sovereigns have previously recognized their obligation under similar circumstances to provide either compensation or a forum, there is little judicial precedent relevant to the issues presented by this case.³ At the same time, the case is of special importance to movants because of the significant number of deliberate attacks against merchant vessels in recent years, specifically those related to the Iran-Iraq War.

Movants have a special interest in the issue of *in personam* jurisdiction raised by petitioner. Their interest extends beyond the jurisdictional implications of belligerent activities by sovereign nations; resolution of the issue may also affect their ability to obtain compensation for other purposeful acts against merchant vessels on the high seas. Movants believe that the relationships among merchant vessels, their trading activities, their owners and their countries of registry, as commonly understood within the world maritime community, are

³ We have been unable to locate any record of a prior instance in which a sovereign has refused to compensate or provide a forum for its unjustified attacks on neutral vessels. Even Nazi Germany maintained a prize court where neutrals could seek compensation for attacks by German armed forces on merchant vessels on the high seas. See C. Colombos, *A Treatise on the Law of Prize* 40-43, 64-65 (1949).

highly relevant to the *in personam* jurisdiction issue and that movants are well qualified to contribute to the Court's understanding thereof.

Respectfully submitted,

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This brief *amicus curiae* addresses only the issue of specific personal jurisdiction presented when suit is brought against a nonresident based upon an intentional tort committed against a vessel on the high seas. It discusses three independent bases for a nation's assertion of such jurisdiction—where the vessel is registered under the laws of such nation, where its owner is a national thereof, or where, as the record in the present case indicates, the vessel is engaged in the commerce of such nation at the time of the commission of the tort. Al-

though *amici* believe that each of these bases is equally sufficient for the exercise of personal jurisdiction (if such assertion is otherwise fair and reasonable), this brief will place greater focus upon the matters of vessel registration and ownership, leaving to respondents a fuller discussion of the matter of the commerce in which the vessel was engaged.

SUMMARY OF ARGUMENT

A person who intentionally commits an act with a reasonably foreseeable effect within a jurisdiction may be required to account before the courts of that jurisdiction for that single act, so long as such accounting is otherwise fair and reasonable under the circumstances. An armed attack upon a neutral merchant vessel has a direct and foreseeable effect upon the owner of the vessel and the commerce in which the vessel is engaged. It is reasonably foreseeable that the effect occurs within the jurisdiction of the sovereign of which the owner is a national and that in whose commerce the vessel was engaged. Frequently either of these may be the country in which the vessel is registered and whose flag it flies. It is commonly understood, however, that vessels flying the flags of certain well-known "open-registry" countries are owned by nationals of countries other than those designated by their respective flags and are almost always engaged in trade between countries other than the flag state.

The exercise of personal jurisdiction in the present case is otherwise fair and reasonable because (1) Argentina's burden of defending in the United States is insubstantial and of its own making, (2) the United States has a strong interest in protecting its commerce, (3) Argentina has denied respondents a forum in which to obtain relief, (4) commerce is a practical way of apportioning personal jurisdiction on the high seas where no state has exclusive jurisdiction, and (5) the policy to be

furthered by the exercise of personal jurisdiction—freedom of the high seas—is a most fundamental international social policy.

ARGUMENT

United States courts have specific personal jurisdiction over a person who commits an intentional tort on the high seas against a vessel which is registered under the laws of, or owned by nationals of, the United States or, as in the present case, which is engaged in the commerce of the United States and, as here, the assertion of such jurisdiction is otherwise fair and reasonable.

A single purposeful act by the defendant, which has a direct, substantial and foreseeable effect in the forum, is sufficient for the exercise of specific personal jurisdiction even if the defendant has no other contacts with the forum, so long as the exercise of jurisdiction is otherwise fair and reasonable.¹ Where, for example, a California court asserted personal jurisdiction over a non-resident who had committed alleged defamatory acts in Florida, the Court observed:

[P]etitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California And they knew that the brunt of . . . [the] injury would be felt by respondent in the State in which she lives and works Under the circumstances, petitioners must "reasonably anticipate being haled into court there"

Calder v. Jones, 465 U.S. 783, 789-90 (1984), quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286,

¹ This brief does not address the issue of general personal jurisdiction which is addressed by the Independent Association of Tanker Owners in its *amicus curiae* brief. We address only the issue of specific personal jurisdiction, which, unlike general jurisdiction, is limited to claims arising from a contact with the forum. See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 nn. 8, 9 (1984).

297 (1980).² The *Restatement (Third) of the Foreign Relations Law of the United States*, § 421(2)(j) (1988), states the principle in the international context as follows:

[A] state's exercise of jurisdiction to adjudicate with respect to a person or thing is reasonable if, at the time jurisdiction is asserted

* * *

the person, whether natural or juridical, has carried on outside the state an activity having a substantial, direct, and foreseeable effect within the state, but only in respect of such activity.³

² See also *Kulko v. California Superior Court*, 436 U.S. 84, 96 (1978); *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957); *Waffenschmidt v. MacKay*, 763 F.2d 711, 720 (5th Cir. 1985) (construing Mississippi law); *Burt v. Board of Regents of University of Nebraska*, 757 F.2d 242, 244-45 (10th Cir. 1985), cert. granted sub nom. *Connally v. Burt*, 474 U.S. 1004 (1985), vacated on other grounds, 475 U.S. 1063 (1986); *Gilbert v. DaGrossa*, 756 F.2d 1455, 1459 n.4 (9th Cir. 1985); *Great Western United Corp. v. Kidwell*, 577 F.2d 1256, 1266-67 (5th Cir. 1978) ("Very little purposeful activity is necessary to satisfy the minimum contacts requirement."), rev'd on other grounds sub nom. *Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979); *Restatement (Second) of Conflict of Laws* § 37 (1971); R. Casad, *Jurisdiction in Civil Actions* ¶ 2.05 (1983).

³ It may be argued that the physical damage sustained by a vessel is the only legally cognizable "effect" for purposes of personal jurisdiction. See, e.g., *Carty v. Beech Aircraft Corp.*, 679 F.2d 1051, 1063-65 (3d Cir. 1982). While such a limitation might be reasonable with respect to negligent conduct, it should not be extended to intentional torts, nor to conduct committed outside the territory of any sovereign. A vessel on the high seas is not within any sovereign's territorial jurisdiction. See *The Vincennes*, 20 F.2d 164, 172 (E.D.S.C. 1927). In the only case we have found which has considered the matter with respect to vessels on the high seas, *In the Matter of Rio Grande Transport, Inc.*, 516 F. Supp. 1155, 1162-63 (S.D.N.Y. 1981), rev'd and remanded on other grounds 770 F.2d 262 (1985), it was decided that the financial effect on the corporate owner due to a collision involving the owner's vessel is the relevant effect for purposes of the commercial activity exception

To determine whether the exercise of jurisdiction in a given case is otherwise fair and reasonable, a court must weigh the factors cited in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, —, 94 L.Ed.2d 92, 105 (1987), discussed *infra* at 12.

A. Foreseeable Effect in the Forum. There is little question but that the effect within the country which registers a merchant vessel which is attacked is direct, substantial and foreseeable.⁴ That effect, however, does

of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1330, 1602-1611. The "direct effect" standard of that exception was intended in part to ensure sufficient contacts for the exercise of personal jurisdiction. H.R. Rep. No. 1487, 94th Cong., 1st Sess. 13, reprinted in 1976 U.S. Code Cong. & Ad. News 6605, 6612; compare Note, *Direct Effect Jurisdiction under the Foreign Sovereign Immunities Act of 1976*, 13 N.Y.U. J. Int'l L. & Pol. 571, 581 (1981).

⁴ That the flag state has primary jurisdiction over the vessels it registers is an axiom of international law.

Perhaps the most venerable and universal rule of maritime law . . . is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it.

Lauritzen v. Larsen, 345 U.S. 571, 584 (1953); see also *McCulloch v. Marineros de Honduras*, 372 U.S. 10, 20 (1963).

Jurisdiction over a vessel extends to persons affecting the vessel. The *Restatement (Third) on Foreign Relations Law*, § 421(2)(f), provides:

In general, a state's exercise of jurisdiction to adjudicate with respect to a person or thing is reasonable if, at the time jurisdiction is asserted . . . a ship . . . to which the adjudication relates is registered under the laws of the state.

An intentional tort committed against a vessel would seem clearly to "relate" to the vessel. See also *United States v. Rogers*, 150 U.S. 249, 260 (1893) ("The general rule is that the country to which the vessel belongs will exercise jurisdiction over all matters affecting the vessel.").

not foreclose the possibility of foreseeable effects within other jurisdictions. An attack upon a merchant vessel on the high seas also has a direct, substantial and foreseeable effect within the country of which the owners of the vessel are nationals and within the country in whose commerce the vessel is engaged when attacked.

There is no question but that an armed attack upon a neutral vessel on the high seas is a purposeful act.⁵ Damage to a merchant vessel necessarily results in financial injury to its owner and in disruption of the commerce in which it is engaged. It is reasonably foreseeable that the places in which those effects will be felt include the country in which the vessel is registered, that of which its owner is a national and that in whose commerce the vessel was engaged at the time of the attack.⁶ While the HERCULES was not registered under the laws of the United States, the record contains allegations that it was engaged in the commerce of the United States at the time of the attack (JA20) and is silent as to the nationality of its ultimate owners. To the extent either country is the United States, the effect within the United States should be sufficient to support the exercise of personal jurisdiction over Argentina.⁷ That the location of that effect was reasonably foreseeable is evident

⁵ "The term 'high seas' means all parts of the sea that are not included in the territorial sea or in the internal waters of a State." Convention on the High Seas, *done* at Geneva, April 29, 1958, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82, Art. 1.

⁶ This brief is not intended to canvass the universe of relationships which, in addition to the vessel's registration, ownership and commerce, may be sufficient to support specific personal jurisdiction. Nor is this brief intended to address the right of an alien owner of a foreign-flag vessel to sue in the United States for a tort committed on the high seas where there is a basis for the exercise of personal jurisdiction.

⁷ The effect within the country having "effective control" over the vessel may also be sufficient. See notes 19, 30 *infra*.

from the commonly-understood realities of international vessel ownership and international commerce.⁸

1. *International Vessel Ownership*. As a matter of international law, merchant vessels which operate on the high seas are required to have a nationality. C. Colombos, *The International Law of the Sea* § 331 (6th ed. 1969).⁹ "Each State shall fix the conditions for the grant of its nationality to ships . . . [, and s]hips shall sail under the flag of one State only." Geneva Convention on the High Seas, Art. 5(1), 6(1).¹⁰

Although the laws pertaining to vessel registration requirements vary from country to country, "[t]he laws of most states authorize only vessels owned by nationals to fly the state's flag." *Restatement (Third) of the Foreign Relations Law* § 501, n.4.¹¹ The owner of a merchant

⁸ That Argentina may have had actual knowledge that the HERCULES was a "U.S. interest" vessel and was engaged in the commerce of the United States (JA60) provides additional justification for the exercise of personal jurisdiction, but it is not essential thereto.

⁹ "The entire legal system which States have evolved for the regulation of the use of the high seas is predicated on the possession by each vessel of a connection with a State having a recognized maritime flag." R. Rienow, *Nationality of a Merchant Vessel* 13 (1937).

¹⁰ See also United Nations Convention on Conditions for Registration of Ships, *done* February 7, 1986, U.N. Conf. on Trade and Dev. Doc. TD/RS/CONF/23 (March 13, 1986), Art. 4(1), 2(1).

¹¹ Although the United States will not register a vessel that is not owned by a United States citizen, 46 U.S.C. § 12102, a corporation can qualify as a citizen for vessel registration purposes even if its stock is owned by aliens but it must meet a number of requirements giving it an American character. 46 C.F.R. § 67.03-9 (1987). Because of those and other requirements, U.S.-flag vessels are rarely owned by corporations owned by foreign nationals.

vessel is, however, not necessarily a national of the flag state. Some countries, particularly so-called "open-registry" countries,¹² register vessels that are not owned by nationals of those countries.¹³ An open-registry flag can be defined as

the flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under condition which, for whatever reasons, are convenient and opportune for the persons who are registering the vessels.

B. Boczek, *Flags of Convenience* 2 (1962).¹⁴

Although open registries have existed at least since the end of World War I, it was not until World War II, and particularly the 1950s, that sizeable numbers of vessels were registered in open-registry countries. *OECD Study on Flags of Convenience*, reprinted in 4 J. Mar. L. & Com. 231, 233 (1973).¹⁵ Today, the major open-registry

¹² Particularly in the past decade, the terms "open registry" and "open register" have been used to describe those vessel registries formerly commonly referred to by such non-neutral terms as "flags of convenience" and "flags of necessity."

¹³ "That a state may attribute its national character only to vessels owned by its nationals has never been a requirement of international law." McDougal, Burke & Vlasic, *Maintenance of Public Order at Sea*, 14 Am. J. Int'l L. 25, 111 (1960).

¹⁴ Open-registry states generally (1) permit ownership or control of vessels by non-nationals, (2) tax income from the operation of vessels at a relatively low level, (3) derive significant income from registration charges but have no national requirement for all the vessels they register, (4) permit relatively easy registration access, (5) permit manning of vessels by non-nationals, and (6) do not have the naval power to control effectively the vessels they register. See United Kingdom Committee of Inquiry into Shipping at 51 (1970), noted in *Restatement (Third) of the Foreign Relations Law* § 501, n.7.

¹⁵ See generally R. Carlisle, *Sovereignty for Sale* (1981).

states, Liberia and Panama, have under their registries the two largest fleets in the world.¹⁶ *Lloyd's Register of Shipping: Statistical Tables* 6 (1987). Almost half of all open-registry tonnage is registered in Liberia and about one third in Panama.¹⁷ About 1,500 vessels fly the flag of Liberia alone. *Id.* United States nationals own or control almost 28 percent of the tonnage registered in Liberia.¹⁸ The open-registry vessels owned by United States nationals are employed in the international bulk trades and other specialized trades where U.S.-flag ves-

¹⁶ The world's largest fleets as of 1987 in deadweight tons (DWT) were:

Liberia	97,957,869
Panama	70,435,824
Japan	54,669,378
Greece	42,775,945
U.S.A.	29,111,255
U.S.S.R.	28,555,746

Lloyd's Register of Shipping: Statistical Tables at 5-7. The United States tonnage includes Great Lakes vessels and the Reserve Fleet intended for national emergency. *Id.* at 3.

¹⁷ The top five open-registry fleets, with their respective percentage shares of the total tonnage registered in those countries, as of July 1, 1987 were:

Liberia	45.7%
Panama	32.9%
Cyprus	12.7%
Bahamas	7.3%
Bermuda	1.4%

U.N. Conf. on Trade and Dev., *Review of Maritime Transport: Beneficial Ownership of Open Registry Fleets*, TD/B/C.4/309/Add.1 at 6 (November 24, 1987).

¹⁸ *Id.* The relationship between the United States and Liberia is long standing both in general and with regard to shipping. United States nationals are credited with providing the impetus for Liberia's open-registry system. Carlisle, *Sovereignty for Sale* at 115 *et seq.*

sels, in the absence of subsidy or other governmental supports, normally cannot compete because of higher costs.¹⁹

Given the prevalence of open-registry vessels in world trade, it is reasonably foreseeable that an act affecting such a vessel will directly affect a national of a country other than the flag state.²⁰ The identity of open-registry countries, particularly the two major ones, is well known, as is the fact that vessels documented in open-registry countries are owned by nationals of other countries. Consequently, the foreseeable effect should not be limited to the nation whose flag the vessel flies.²¹

2. *International Commerce.* The United States depends heavily on vessels to carry its foreign trade. U.S. Bureau

¹⁹ The Liberian, Panamanian, Bahamian and Honduran vessels beneficially owned by Americans are deemed by United States defense officials to be under "Effective U.S. Control" and thus available to the United States during a national emergency. See, e.g., Commission on Merchant Marine and Defense, *First Report Findings of Fact and Conclusions* at 29 (September 30, 1987); note 30 *infra*.

²⁰ When the owner of a vessel is a corporation or similar business entity, its locus as well as the nationality of its owners may be significant. Given that the purpose of the "effects" doctrine is to protect persons within a sovereign's territory who are affected by an action committed outside the territory, it is useful to inquire whether a corporation is sufficiently present in the sovereign to be deemed to have sustained an actual loss in that territory. See Note, *Effects Jurisdiction Under the Foreign Sovereign Immunities Act and the Due Process Clause*, 55 N.Y.U. L. Rev. 474, 512-13 (1981). The principal place of business of a corporation, for example, would seem to be a sufficient presence in most cases.

²¹ The personal jurisdiction rule proposed, that the state of the nationality of the owner of a vessel may be an appropriate forum to adjudicate disputes arising from acts affecting such a vessel, is unrelated to any definition of an alien under the Alien Tort Statute, 28 U.S.C. § 1350. The Alien Tort Statute defines subject matter jurisdiction, not personal jurisdiction. See *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975).

of the Census, *Highlights of U.S. Export and Import Trade*, Report FT990 at B-5, C-5 (December 1987). Open-registry vessels carry a large proportion of the foreign waterborne commerce of the United States in particular and of world commerce in general.²² Vessels registered in Liberia and Panama together carried almost 40 percent of United States imports and exports by tonnage in 1985. U.S. Dept. of Transportation, *United States Oceanborne Foreign Trade Routes* 187 (December 1987). In contrast, U.S.-flag vessels transported only 4.3 percent of U.S. oceanborne foreign trade in that same year. *Id.* at 187. Most of the commerce carried by vessels registered in open-registry countries is carried in so-called "cross-trades" unconnected with those countries.²³

Given the nature of oceanborne trade, it is reasonably foreseeable that an attack upon a vessel will affect the commerce of some country. Given the facts that relatively little of United States commerce is carried by U.S. flag vessels, and that it is well known that United States commerce is conducted by vessels registered by many nations including open-registry countries, the foreseeability of the effect on United States commerce should not be related to flag.²⁴

²² Open-registry tankers, like the HERCULES, carry a very large proportion of United States oceanborne trade in petroleum and petroleum products. In 1985, tankers registered in Liberia and Panama carried about 50 percent of that trade; U.S.-flag tankers carried about 3 percent. U.S. Dept. of Transportation, *United States Oceanborne Foreign Trade Routes* at 199.

²³ Neither Liberia nor Panama is in the top thirty countries in volume of oceanborne trade with the United States. See *id.* at 289.

²⁴ The effect within the United States and the foreseeability of that effect should not depend on whether a vessel is in the domestic or foreign commerce of the United States. The HERCULES happened to be on a voyage from a United States possession to the

B. Fairness and Reasonableness in the Present Case.

Whether the exercise of personal jurisdiction in a given case is fair and reasonable depends on:

[1] the burden on the defendant, [2] the interests of the forum state, and [3] the plaintiff's interest in obtaining relief. It must also weigh in its determination [4] "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and [5] the shared interest of the several States in furthering fundamental substantive social policies."

Asahi Metal, 480 U.S. at—, 94 L.Ed.2d at 105, quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 292.

1. *Burden on the Defendant.* Any burden on Argentina to defend in the United States is insubstantial. Because the significant facts are not in dispute, it is likely that the case will be decided upon a dispositive motion. Under similar circumstances a foreign corporation would have sufficient resources so that the case would not be unduly burdensome. See *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1333 (9th Cir. 1984). The Argentine Republic is certainly no stranger to the United States. See *Amicus curiae* Brief of International Association of Independent Tanker Owners, Pt. III. And to the extent a defendant, who purposefully and violently attacks a merchant vessel on the high seas, is burdened by defending in some state, that burden is self-inflicted and should be outweighed by other factors favoring the exercise of jurisdiction.

2. *Interest of the Forum State.* The state in whose commerce the vessel is engaged has an interest in pro-

United States when it was attacked. In either case, a basis for personal jurisdiction would exist because there would be an effect within the United States.

tecting its commerce.²⁵ That interest is well recognized.²⁶

3. *Plaintiff's Interest in Obtaining Relief.* The state whose commerce is affected may be the only possible forum if the defendant is a sovereign which, like Argentina, refuses to acknowledge its obligation to provide compensation or a forum. It may be appropriate for the courts of that state to abstain from exercising jurisdiction over a defendant state which provides either just compensation or a forum. But in the absence of such accommodation, there is no reason to abstain.

4. *Judicial System's Interest in Obtaining Efficient Resolution of Controversies.* While no state has exclusive jurisdiction over the high seas, every state has the right to assert jurisdiction within reason over persons for acts committed on the high seas. *Maul v. United States*, 274 U.S. 501, 511 (1927) ("[t]he high sea is common to all

²⁵ A forum "has a significant interest in redressing injuries that actually occur within the State." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984). Similarly, a forum "has a manifest interest in providing effective means of redress for its residents." *McGee v. Int'l Life Ins. Co.*, 355 U.S. at 223.

²⁶ Congress has recognized the interest of the United States in the protection of vessels engaged in United States commerce. See, e.g., 46 U.S.C. app. § 1283 (grants permission to the Secretary of Transportation to insure "vessels engaged in transportation in the waterborne commerce of the United States"); 46 C.F.R. Part 307 (1987) (requires "certain non-U.S.-flag vessels in U.S. foreign commerce" to participate in the Automated Mutual-Assistance Vessel Rescue System or AMVER).

The ownership state's interest is also well recognized. "The state or states of which the ultimate owners of the vessel are citizens have an interest in protecting their nation's investments." Note, *The Effect of United States Labor Legislation on the Flag of Convenience Fleet*, 69 Yale L. J. 498, 505 (1960). "[T]he state has not only the right but even the duty of protecting and defending its nationals abroad by every means authorized by international law." *The Costa Rica Packet* (1897), 5 Moore, *International Arbitrations* 4948 (1898).

nations and foreign to none").²⁷ Consequently, the issue of personal jurisdiction for an act occurring on the high seas is not a matter of choosing between sovereigns each having personal jurisdiction. Rather, it is a matter of deciding whether any sovereign may assert jurisdiction. If no sovereign has personal jurisdiction, there will be a judicial vacuum, which hardly accords with the interest of the international community in resolving controversies efficiently. See Colombos, *The International Law of the Sea* at 67. Such a vacuum would countenance anarchy on the high seas and essentially preclude the peaceful resolution of disputes arising out of events occurring there.

5. *Substantive Social Policies.* Finally, freedom of the high seas is one of the most fundamental and universally-recognized international social policies.²⁸ Consequently, the international community has a heavy interest in policing violations of the freedom of the seas.

C. *Considerations of Jurisdiction to Prescribe and Enforce.* Allowing the ownership state, or the state in whose commerce a vessel is engaged, to exercise personal jurisdiction over a person committing an intentional act affecting a vessel would not give that state general jurisdiction over vessels owned by its nationals by reasons of that ownership or commerce. Personal jurisdiction, or jurisdiction to adjudicate, is distinct from jurisdiction to prescribe and to enforce.²⁹ Jurisdiction to prescribe and

²⁷ See also *The Vines*, 20 F.2d at 172 ("The high seas . . . are common property of all nations.")

²⁸ Most states with identifiable interests in shipping, including the United States and Argentina, have ratified the Geneva Convention on the High Seas and/or the United Nations Convention on the Law of the Sea, done December 10, 1982, U.N. Pub. E. 83.V.5 (1983), Art. 87, reprinted in 21 Int'l Legal Mat. 1261 (1983), both of which guarantee freedom of the high seas.

²⁹ Jurisdiction to prescribe is jurisdiction "to make . . . law applicable to the activities, relations, or status of persons, or the interests of persons in things." Jurisdiction to enforce is jurisdiction

to enforce is usually reserved exclusively for the flag state.³⁰ There is nothing exclusive about personal jurisdiction.

The personal jurisdiction requirement . . . represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.

Insurance Corp. of Ireland v. Compagnie des Bauxites, 456 U.S. 694, 702 (1982). When the flag state, ownership state and "commerce state" happen to be different, as is usually the case where an open-registry vessel is involved, each state may have basis for asserting personal jurisdiction. Whether one state is more appropriate will depend on venue and the doctrine of *forum non conveniens*, not upon personal jurisdiction.

CONCLUSION

For the foregoing reasons, the American Institute of Merchant Shipping, the International Chamber of Shipping and the Federation of American Controlled Shipping urge the Court to hold that United States courts have personal jurisdiction over a foreign sovereign with respect to claims arising out of the purposeful attack on

"to induce or compel compliance or to punish noncompliance with . . . laws or regulations." Jurisdiction to adjudicate is jurisdiction "to subject persons or things to the process of . . . courts or administrative tribunals." *Restatement (Third) of the Foreign Relations Law* § 401.

³⁰ There are, however, at least two doctrines which ascribe jurisdiction to prescribe and enforce to states other than the flag state under certain circumstances. One is known as "genuine link." See U.N. Conf. on Trade and Dev., *Economic Consequences of the Existence or Lack of a Genuine Link Between Vessel and Flag of Registry*, TD/B/C.4.168/Add.1 (December 9, 1977); McDougal, Burke & Vlasic, *Maintenance of Public Order at Sea*, 54 Am. J. Int'l L. at 97 *et seq.* The other is known as "effective control." See Carlisle, *Sovereignty for Sale* Ch. 11; Watts, *The Protection of Merchant Ships*, 1957 British Yearbook Int'l L. 52, 84; but see H. Meyers, *The Nationality of Ships* 66 (1967).

the high seas of a neutral vessel engaged in the commerce of the United States and that personal jurisdiction over Argentina in the present case is otherwise fair and reasonable. We also urge the Court to recognize that jurisdiction may also be based upon the registration or ownership of the vessel involved.

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